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In re Application of	:	
Westby et al.	:	
Application No. 10/714,478	:	ORDER TO
Filed: November 13, 2003	:	SHOW CAUSE
Attorney Docket No. STL 8646	:	

This is a show cause order based on the expiration of U.S. Patent No. 6,317,800, for which the present application requests reissue.

### BACKGROUND

1. The present application ("present reissue proceeding") was filed November 13, 2003, for reissue of U.S. Patent No. 6,317,800 (the '800 patent), which issued November 13, 2001.
2. A review of the Office's financial records for the '800 patent reveals that the 3.5 year maintenance fee due and not paid could have been paid during the period from November 15, 2004 (November 13, 2004 was a Saturday) through May 13, 2005, or with a surcharge during the period from May 16, 2005 (May 14, 2005 was a Saturday) through November 14, 2005 (November 13, 2005 was a Sunday). As a result, the '800 patent expired after midnight on November 13, 2005, for failure to pay the 3.5 year maintenance fee due. See 1302 *Official Gazette* 1232 (January 10, 2006).

### ORDER TO SHOW CAUSE

Since the '800 patent has expired for failure to pay the first maintenance fee, the Director of the USPTO no longer has the authority under 35 U.S.C. § 251 to reissue the '800 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993).

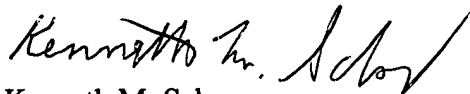
As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only "for the unexpired part of the term of the original patent." Thus, when **Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority** because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393; Emphasis added]

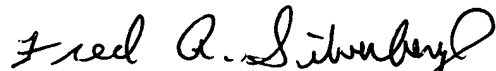
Because the Director no longer has the authority under 35 U.S.C. § 251 to reissue the patent, the Office intends to terminate the present reissue proceeding, and thereafter hold the application for reissue of the '800 patent to be an abandoned application.

### CONCLUSION

1. Applicant is hereby being provided with a period of **30 DAYS** from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding. If applicant proposes to show cause why the present reissue proceeding should not be terminated, applicant's showing must include an explanation of why the proceeding should continue in spite of the expiration of the original patent. If applicant makes a showing, the showing will be evaluated as to whether it provides sufficient basis why the present reissue proceeding should not be terminated.
2. Failure to respond to this show cause order within the 30 day period that has been set will result in the proceedings being terminated by default. If the present reissue proceeding is terminated, jurisdiction over the application for reissue of the '800 patent will be returned to Technology Center 2116 for processing as an abandoned application.
3. Jurisdiction over the file for reissue application 10/714,478 is being retained in the Office of Patent Legal Administration (OPLA), pending a response by applicant, or the expiration of time for a response.
4. Telephone inquiries related to this decision should be directed to Fred Silverberg, Senior Legal Advisor, at (571) 272-7719 or, in his absence to Kenneth M. Schor, Senior Legal Advisor, at (571) 272-7710.



Kenneth M. Schor  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner for Patent Examination Policy



Conferee: Fred A. Silverberg, Senior Legal Advisor

REMARKS

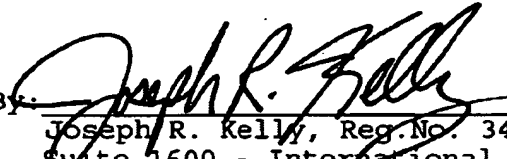
Applicants respectfully request entry of this Preliminary Amendment prior to the first Official Action and prior to calculating the fees for the application.

Applicants respectfully request consideration and allowance of claims 1-38.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to deposit account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By:   
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